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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/004,803 | 01/09/1998 | JASON T. EPPS | | 1682 |

7590

03/26/2003

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EXAMINER

STRIMBU, GREGORY J

ART UNIT

PAPER NUMBER

3634

DATE MAILED: 03/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/004,803

Applicant(s)

EPPS ET AL.

Examiner

Gregory J. Strimbu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 January 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7, 9, 12-16, 18 and 19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7, 9, 12-16, 18, 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 2-4, 7, 9, 13-15, 18 and 19 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Although the applicant originally disclosed the concepts of focusing the sensors upwardly and focusing the sensors at an angle of approximately 10 degrees from the vertical, the applicant has not disclosed the specific range of no more than about 10 degrees from the vertical. Even though the terminology “upwardly” includes the range of no more than about 10 degrees from the vertical, the applicant must clearly set forth the specific range of no more than about 10 degrees from the vertical in order to show that the applicant had possession of the claimed invention at the time of filing.

Claims 1-5, 7, 9, 12-16, 18 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as “an extended arm” on line 9 of claim 1 render the claims indefinite because it is unclear if the applicant is referring to the object set forth above or is attempting to set forth another object in addition to the one set forth above. Claim 1

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sets forth an object on line 7 of claim 1 and then sets forth another object, i.e., the arm, on line 10 of claim 1. Therefore, it is unclear if the arm is referring to the object set forth above or is setting forth another object in addition to the one set forth above.

Claim Rejections - 35 USC § 103

Claims 1, 5, 12 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art of figure 5 in view of Jonsson '912. The admitted prior art in figure 5 discloses a fast food service window comprising a window assembly with at least one movable window member 16, a window operator assembly (not shown, but disposed behind upper frame member 21) mechanically coupled to the movable window member, a proximity sensor comprising an emitter 61 emitting radiation and a receiver 62 receiving radiation from the emitter, the radiation being reflected from an object being sensed, the sensor being functionally coupled to the window operator assembly and directed to detect an extended arm of a person when the arm is extended over the proximity sensor, wherein the movable window member opens whenever the extended arm of the person is sensed by the proximity sensor. The admitted prior art of figure 5 is silent concerning the sensor being focused upward.

However, Jonsson '912 discloses a sensor 10 having a plurality of integral infrared emitters 14 and sensors 16. The sensors 16 and the emitters 14 are aligned upwardly as shown in figure 4. The sensor 10 is angled at an angle slightly askew from a vertical axis such that it will only operate the door when a person is in a

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predetermined desired position and will operate the door when an extended arm of a person is over the proximity sensor.

It would have been obvious to one of ordinary skill in the art to provide the admitted prior art of figure 5 with upwardly focused sensors, as taught by Jonsson '912, to only operate the window when a person is in a desired predetermined position.

Allowable Subject Matter

Claims 13-15 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The following is an examiner's statement of reasons for allowance: the prior art of record, absent applicant's own disclosure, fails to teach the entire combination of elements set forth in the claimed invention. Specifically, the prior art of record fails to teach the proximity sensor being surrounded by a ring which rises above the sensor. See lines 1-2 of claim 13. Additionally, the prior art of record fails to teach the proximity sensor has a lens and projection extending beyond the lens a distance sufficient to inhibit objects approaching the lens from disabling the functioning of the proximity sensor before the extended arm is detected. See lines 2-3 of claim 15.

Response to Arguments

Applicant's arguments filed January 17, 2003 have been considered but are not persuasive.

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With respect to the applicant's comments concerning the language "not more than about 10 degrees", the examiner respectfully disagrees. The disclosure clearly sets forth that the sensors are angle upwardly at a preferred angle of about 10 degrees. See lines 9-15 of page 8. The recitation "not more than about 10 degrees" includes angles not supported by the disclosure such as an angle of 1 degree. Therefore, the disclosure does not support such a recitation.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 703-305-3979. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on 703-308-2686. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3597 for regular communications and 703-305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-2168.

A handwritten signature in black ink, appearing to read "Gregory J. Strimbu", with a long horizontal flourish extending to the right.

Gregory J. Strimbu
Primary Examiner
Art Unit 3634
March 25, 2003